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UNITED STATES DISTRICT COURT MASSACHUSETTS

Suzanne Genereux, et al.)
Plaintiffs,))
v.) Case No. 04-CV-12137 JLT
American Beryllia Corp., et al.)
Defendants.))

MOTION OF DEFENDANTS BRUSH WELLMAN INC., BRUSH WELLMAN CERAMICS INC. AND BRUSH WELLMAN CERAMIC PRODUCTS INC. TO DISMISS COUNTS IV, V, VI, VII, VIII, XII, AND XIII OF PLAINTIFFS' AMENDED COMPLAINT FOR FAILURE TO STATE CLAIMS UPON WHICH RELIEF MAY BE GRANTED

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendants Brush Wellman Inc., Brush Wellman Ceramics Inc. and Brush Wellman Ceramic Products Inc. (collectively "Brush Wellman") move to dismiss counts IV, V, VI, VII, VIII, XII, and XIII of plaintiffs' Amended Complaint.¹

The grounds for this motion are: (1) Counts Four and Twelve of plaintiffs' complaint fail to state claims for ultrahazardous and/or abnormally dangerous activities under established Massachusetts law; (2) Counts Five and Thirteen fail to state claims under M.G.L. Chapter 93A because of plaintiffs' failure to comply with statutory notice prerequisites; (3) Count Six fails to state a claim for fraudulent concealment or nondisclosure, a business tort whose elements are not pleaded here; (4) Count Seven fails to state a claim for civil conspiracy under Massachusetts law;

¹ Plaintiffs' Amended Complaint names "Brush Wellman Ceramics, Inc." and "Brush Wellman Ceramic Products, Inc." as defendants. Those entities do not exist and their inclusion in the Amended Complaint is the subject of a Rule 21 motion, filed herewith, to drop these defendants.

and (5) Count Eight fails to state a claim for "medical monitoring," insofar as that cause of action does not exist in Massachusetts.

WHEREFORE, and for the reasons set forth in the accompanying memorandum of law, Counts IV, V, VI, VII, VIII, XII, and XIII of plaintiffs' Amended Complaint should be dismissed in their entirety.

BRUSH WELLMAN INC., BRUSH WELLMAN CERAMICS INC., and BRUSH WELLMAN CERAMIC PRODUCTS INC.

By their attorneys,

Dated: November 10, 2004

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(Application for Admission *Pro Hac Vice* pending)

REQUEST FOR ORAL ARGUMENT

Defendant Brush Wellman Inc. believes that oral argument may assist the Court and hereby requests a hearing on the foregoing Motion to Dismiss Counts IV, V, VI, VII, VIII, XII, and XIII of Plaintiffs' Amended Complaint.

Alan M. Spiro BBO # 475650

Attorney for Defendant Brush Wellman Inc.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

I HEREBY CERTIFY that on this 10th day of November, 2004, the undersigned counsel conferred with counsel for plaintiffs, Bradley M. Henry, by telephone, and attempted, in good faith, to resolve or narrow the issues addressed in the foregoing Motion of Defendants Brush Wellman Inc., Brush Wellman Ceramics Inc., and Brush Wellman Ceramic Products Inc. to Dismiss Counts IV, V, VI, VII, VIII, XII, AND XIII of Plaintiffs' Amended Complaint for Failure to State Claims Upon Which Relief May be Granted.

Alan M. Spiro BBO # 475650

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Attorney for Defendant Brush Wellman Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November, 2004, a true and correct copy of the foregoing Motion of Defendants Brush Wellman Inc., Brush Wellman Ceramics Inc., and Brush Wellman Ceramic Products Inc. to Dismiss Counts IV, V, VI, VII, VIII, XII, AND XIII of Plaintiffs' Amended Complaint for Failure to State Claims Upon Which Relief May be Granted was served via U.S. mail, first class postage prepaid, to the following:

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